

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

SHAW,

Defendant.

Case No. 22-cr-00105-BLF-1

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
REQUEST TO MODIFY AMENDED
PRESENTENCE REPORT**

Re: ECF No. 196

Presently before the Court is Defendant Scott Shaw's ("Mr. Shaw") Comments to Amended Presentence Investigation Report. *See* Presentence Report Comments, ECF No. 196. Mr. Shaw requests five modifications to the Amended Presentence Investigation Report ("Amended Presentence Report"), ECF No. 194, namely, (1) the change of the final word in Paragraph 13 ("breasts") from plural to singular; (2) the deletion of the sentence in Paragraph 18 reading, "In doing so, he touched her breasts"; and (3)–(5) the deletions of Items 6, 7, and 8, respectively, of the Sentencing Recommendations. *See* Presentence Report Comments 2. Mr. Shaw argues that his first request to modify Paragraph 13 is consistent with the testimony elicited at trial; that the second request to modify Paragraph 18 would delete a redundant sentence; and that the remaining requests to delete three recommended conditions of supervised release are made out of concern that the transmittal of the full report to the Bureau of Prisons may (a) cause the Bureau of Prisons to view and treat him as a sex offender, and (b) affect his safety. *See id.*

The Government does not oppose Mr. Shaw's request to modify Paragraph 13, but otherwise opposes his requests. *See* Govt.'s Response 1–2, ECF No. 200. The Government argues that Mr. Shaw admitted in his Plea Agreement to the conduct described in the sentence at issue in Paragraph 18—and that redundancy is not an appropriate basis for amendment—and that

Mr. Shaw has not provided any authority or proper basis for his requests to delete Items 6, 7, and 8 of the Sentencing Recommendations. *See id.*

The Court has reviewed the parties' comments, the Amended Presentence Report, and Mr. Shaw's Plea Agreement. The Court finds that Mr. Shaw's requested modification to Paragraphs 13 is consistent with the Court's oral determinations at the sentencing hearing held on November 17, 2023, and will accordingly grant this request. The Court will deny Mr. Shaw's request to modify Paragraph 18 by deleting the sentence "In doing so, he touched her breasts," as Mr. Shaw admitted in his Plea Agreement, with respect to the same victim, "I touched her breasts." *See* Plea Agreement ¶ 2(e), ECF No. 187. The Court does not find any perceived redundancy to constitute good reason to delete a sentence directly supported by the Plea Agreement.

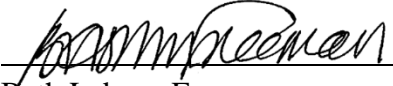
With respect to Items 6, 7, and 8 of the Sentencing Recommendations, the Court concludes that its refusal to implement these conditions of supervised release, *see* Judgment, ECF No. 197, is not a reason to extract the fact of their recommendation from the Amended Presentence Report. The Court further notes that the Recommendation section of the Amended Presentence Report is neither filed on the public docket nor transmitted to the Bureau of Prisons. Accordingly, the Court will deny Mr. Shaw's requests to delete Items 6, 7, and 8 of the Sentencing Recommendations from the Amended Presentence Report.

For the foregoing reasons, it is hereby ORDERED that:

1. Mr. Shaw's request to modify the Amended Presentence Report is GRANTED IN PART, so that the last word of Paragraph 13 shall be changed from the plural "breasts" to the singular "breast." Mr. Shaw's request to modify the Amended Presentence Report is otherwise DENIED.
2. Probation shall file a Further Amended Presentence Report that reflects the ordered modification within 14 days of the entry of this order.

IT IS SO ORDERED.

Dated: December 4, 2023


Beth Labson Freeman
United States District Judge